

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Curves International, Inc.,

Plaintiff,

vs.

Linda S. Mosbarger,

Defendant

Case Action No. 2007-CV-807-MHT

**CURVES INTERNATIONAL, INC.'S
SEPARATE ANSWER TO
COUNTERCLAIM**

Plaintiff Curves International, Inc. ("Curves"), for its Separate Answer to the Counterclaim filed by defendant Linda Mosbarger, states and alleges as follows:

1. Curves denies each and every allegation of the Counterclaim except as expressly admitted or qualified below.
2. Curves is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Counterclaim.
3. Curves admits the allegations contained in paragraph 2 of the Counterclaim.
4. With respect to the allegations contained in paragraph 3 of the Counterclaim, Curves acknowledges that Mosbarger seeks to add the named individuals as defendants to this action, but denies that those individuals have any liability to Mosbarger. Curves further denies that Mosbarger has properly commenced an action against the named individuals. Curves denies the remainder of the allegations contained in paragraph 3.
5. Curves is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in misnumbered paragraphs 2-3 of the Counterclaim.

6. With respect to the allegations contained in misnumbered paragraphs 4-5 of the Counterclaim, Curves admits that Mosbarger was granted a CURVES® franchise in 1999, and that the franchise at issue was located at 97 Lightwood Road, Deatsville, Alabama. Curves is without knowledge or information sufficient to form a belief as to the remainder of the allegations contained in misnumbered paragraphs 4-5.

7. Curves is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in misnumbered paragraph 6 of the Counterclaim.

8. Curves admits the allegations contained in misnumbered paragraph 7 of the Counterclaim.

9. Curves denies the allegations contained in misnumbered paragraphs 8-9 of the Counterclaim.

10. Curves is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in misnumbered paragraphs 10-12 of the Counterclaim.

11. With respect to the allegations contained in misnumbered paragraphs 13-15, Curves admits that Mosbarger improperly terminated her franchise agreement in 2006. Curves denies the remainder of the allegations contained in misnumbered paragraphs 13-15.

12. With respect to the allegations contained in misnumbered paragraph 16, Curves admits that Mosbarger spoke with Curves' representatives regarding her decision to prematurely terminate her franchise rights. Curves is without knowledge or information sufficient to form a belief as to the precise identities of the individuals with whom Mosbarger spoke. Curves denies the remainder of the allegations contained in misnumbered paragraph 16.

13. Curves denies the allegations contained in misnumbered paragraphs 17-18 of the Counterclaim.

14. Curves is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in misnumbered paragraphs 19-20 of the Counterclaim.

15. Curves denies the allegations contained in misnumbered paragraphs 21-23 of the Counterclaim.

16. Curves is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in misnumbered paragraphs 24-29 of the Counterclaim.

17. Curves denies the allegations contained in misnumbered paragraph 30 of the Counterclaim.

18. Curves is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in misnumbered paragraphs 31-35 of the Counterclaim.

19. With respect to the allegations contained in misnumbered paragraphs 36-41 of the Counterclaim, Curves admits that its counsel, Michael Gray, visited Jordan's Gym on November 1, 2007, the day before Mr. Gray was scheduled to take Mosbarger's deposition. Curves denies the remainder of the allegations contained in misnumbered paragraphs 36-41.

20. Curves is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in misnumbered paragraph 42 of the Counterclaim.

21. Curves denies the allegations contained in misnumbered paragraphs 43-45 of the Counterclaim.

22. Curves denies the allegations contained in misnumbered paragraphs 46-68 of the Counterclaim.

AFFIRMATIVE DEFENSES

23. One or more of Mosbarger's claims fails to state a claim upon which relief can be granted.

24. One or more of Mosbarger's claims is barred by the equitable doctrines of waiver, estoppel, laches, unclean hands, privilege and/or immunity.

25. One or more of Mosbarger's claims is barred by the applicable statute of limitations.

26. One or more of Mosbarger's claims is barred by Alabama Statute § 6-5-570 *et seq.*

27. Mosbarger has failed to mitigate her damages, if any.

28. One or more of Mosbarger's claims is barred by the plain language of her franchise agreement.

WHEREFORE, Curves respectfully requests that:

1. Mosbarger's claims be dismissed in their entirety;
2. Curves be awarded its attorneys' fees and costs incurred in responding to Mosbarger's Counterclaim; and
3. Curves be granted such other and further relief as the Court may deem just and equitable.

Dated: December 21, 2007

**GRAY, PLANT, MOOTY,
MOOTY & BENNETT, P.A.**

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